

Environmental Information Regulations 2004 (EIR)

Decision notice

Date: 13 February 2019

Public Authority: North Hertfordshire District Council

Address: Town Lodge
Gernon Road
Letchworth Garden City
Hertfordshire
SG6 3HN

Decision (including any steps ordered)

1. The complainant has requested information with regards to a brown bin scheme. North Hertfordshire District Council (the council) refused the request under regulation 12(4)(b) of the EIR as it considered it to be manifestly unreasonable because of the time and resources that would be required for it to respond.
2. The Commissioner's decision is that regulation 12(4)(b) of the EIR is engaged, the public interest is in maintaining the exception and that the council has provided appropriate advice and assistance to the complainant.
3. The Commissioner does not require the council to take any steps.

Request and response

4. On 5 May 2018 the complainant made the following information request to the council:

"Recently in the press there has been discussion about the economics of the NHDC brown bin scheme and if it is subsidised, breaks even or perhaps makes a profit for the council.

Using the Environmental Information Regulations 2004 I request all information about the brown bin scheme

including but not limited to the projected finances and economics. Please ensure you include all the information the councillors were provided with as they discussed and made the decision to adopt the scheme.”

5. The council responded on the 6 June 2018 confirming that it holds the information requested but refused to provide it under regulation 12(4)(b) of the EIR as it considered to respond would be manifestly unreasonable. The council determined that it would be over the appropriate cost limit to provide the information.
6. The council did provide the complainant with two links to its website, one for the main Cabinet meeting¹ which discussed the waste service contract and the second to the overall costs of the contract².
7. The complainant requested an internal review on the same day stating that he did not consider an EIR request is limited in the same way as an FOI request in terms of the appropriate cost limits and that the council has not provided any advice and assistance as per regulation 9 of the EIR.
8. The council provided its internal review on the 25 June 2018 upholding its decision to refuse the request.
9. With regards to advice and assistance, the council stated that it did provide two links to its website and concluded its internal review by stating that if the information available in these two links do not answer the information request, then it would invite him to resubmit a refined request.
10. The council explained that a request for 'all' information is too general for it to respond but if there was specific information or documents that he would like to receive, then to detail this in any refined request or contact the council further with any questions on this.

¹ <https://www.north-herts.gov.uk/home/waste-and-recycling/new-garden-waste-collection-service>

² <https://www.north-herts.gov.uk/home/business/procurement/contracts-register>

Scope of the case

11. The complainant contacted the Commissioner on 25 June 2018 to complain about the refusal of his request and has asked the Commissioner to determine whether he has received appropriate advice and assistance.
12. The Commissioner therefore considers the scope of the request is to determine whether the council is able to rely on regulation 12(4)(b) of the EIR to refuse the request as manifestly unreasonable and if so, whether the council has provided appropriate advice and assistance as per regulation 9 of the EIR

Reasons for decision

Regulation 12(4)(b) of the EIR – Manifestly Unreasonable Requests

13. Regulation 12(4)(b) of the EIR states that a public authority may refuse to disclose environmental information to the extent that the request for information is manifestly unreasonable. There is no definition of 'manifestly unreasonable' under the EIR, but the Commissioner's opinion is that 'manifestly unreasonable' implies that a request should be obviously or clearly unreasonable.
14. In this case, the council considers the request is manifestly unreasonable due to the time and cost of resources necessary to carry out all searches in order to fully comply with the request.
15. Unlike the FOIA, the EIR does not have a provision where requests can be refused if the estimated cost of compliance would exceed a particular cost limit. However, the Commissioner considers that if a public authority is able to demonstrate that the time and cost of complying with the request is obviously unreasonable, regulation 12(4)(b) will be engaged. The Commissioner considers the section 12 cost provisions in the FOIA is a useful benchmark, acting in this case as a starting point for the Commissioner's investigations.
16. Section 12 of the FOIA is the exemption that a public authority can refuse to comply with a request if it estimates that the cost of compliance would exceed the 'appropriate limit'. This limit is defined by the Freedom of Information and Data Protection (Appropriate Limit and

Fees) Regulations 2004 (the Regulations³) as £600 for central government departments and £450 for all other public authorities.

17. The Regulations allow a public authority to charge the following activities at a flat rate of £25 per hour of staff time:
 - Determining whether the information is held;
 - Locating the information, or a document which may contain the information;
 - Retrieving the information, or a document which may contain the information; and
 - Extracting the information from a document containing it.
18. Section 12 of the FOIA states that a public authority does not allow for consideration of exemptions when considering the time it would take to respond, regulation 12(4)(b) of the EIR does not have the same parameters.
19. Therefore, in the Commissioner's view, if the council can demonstrate a sufficient unreasonable burden on its resources in terms of time and expense to respond to the request, then regulation 12(4)(b) of the EIR may be engaged.
20. In order to make a determination, the Commissioner has asked the council to explain its reasons for refusing the request as manifestly unreasonable.
21. The council has explained to the Commissioner that a request for 'all' information creates too wide a scope for it to provide a response to this request due to the time and cost it would take to try to gather all the information it potentially holds on this subject.
22. It has analysed all forms of communication in its Customer Services Centre between January 2018 to November 2018 and found that it held
 - 44,500 quick telephone calls amounting to 222,500 seconds (at 5 seconds per case)

³ http://www.legislation.gov.uk/ukxi/2004/3244/pdfs/ukxi_20043244_en.pdf

- 22,135 waste case calls amounting to 664,050 seconds (at 30 seconds per case)
 - 1,008 waste complaints amounting to 30,240 seconds (at 30 seconds per case)
23. The council has calculated this to take 255 hours to review in order to determine if there are any calls relevant to the request.
 24. The council's IT department has carried out a scan of its Email Exchange server. This scan includes all emails sent and received by all council officers and councillors. The council advised that this scan took two hours to complete and it identified 2404 emails relating to waste.
 25. The council has explained to the Commissioner it would need to print and review each email and redact personal or commercially sensitive information. The council has estimated that this would take an average of 5 minutes per email. This amounts to 200.3 hours of officer time to complete.
 26. The council has advised the Commissioner that the relevant legal file on its Document Management System in relation to this request, contains 5,389 documents. It says that it is not possible to ascertain, via an electronic search, which documents relate to the enquiry and as such each document would need to be checked manually.
 27. The council estimate that it would take an average of two minutes to check each document which calculates to be 180 hours of officer time.
 28. The council has further explained to the Commissioner that to ensure it has checked for 'all' information a search of its corporate G and H drives would need to be completed. The council has stated that previous searches its network drives have taken up to 18 days to complete, running at 24 hours a day and this had a detrimental effect on the performance of the council's network.
 29. The council has estimated that it would take two weeks to return a result on all documents relating to waste that are held on its G and H drive. Then all the information would need to be reviewed for personal and commercially sensitive information and redacting where necessary.
 30. The council has told the Commissioner that the estimate provided has been based on similar exercises that it has carried out. Due to the sensitivity of the information held, the council states that it would be necessary to review all communications to ensure that all personal or commercially sensitive data is redacted before release.

31. Any information in the form of documents and emails would need to be printed, reviewed and redacted manually and then scanned back into the system enabling an electronic response.
32. The council has advised the Commissioner that from a sampling exercise carried out on emails, it revealed that all the emails from this exercise contained personal data that would need to be redacted as described in the paragraph above.
33. The council has confirmed to the Commissioner that the estimate and description of work required is the quickest available method to carry out the searches and make relevant redactions in order to provide a full response to the request.
34. On review of the council's estimates, the Commissioner notes that it would take the council weeks of officer time in order to fully determine 'all' the information that it holds falling within the scope of the complainant's request.
35. The difficulty is when a request encompasses 'all information held' by an authority on a subject matter, as it is then obliged to consider everything it holds falling within those wide parameters.
36. It is difficult to see, from the searches the council would need to undertake, how it could reduce its search time significantly enough to allow it to vastly reduce the amount of officer time required to gather and redact all relevant information.
37. On this basis, the Commissioner accepts that the several weeks of officer time that would be required to compile a response to the request would constitute a disproportionate effort and place an excessive burden on the council resources in having to respond to this request.
38. The Commissioner therefore finds that regulation 12(4)(b) of the EIR is engaged to this request.

Regulation 12(1)(b) of the EIR - Public interest test

39. Regulation 12(4)(b) of the EIR is a qualified exemption and is therefore subject to the public interest test at regulation 12(1)(b) of the EIR which states that information can only be withheld if in all circumstance of the case the public interest in maintaining the exception outweighs the public interest in disclosure.

Public interest arguments in favour of disclosure

40. The council has told the Commissioner that when carrying out the public interest test, it took in to consideration transparency and accountability.

As this plays a big part in keeping members of public informed about public authority actions and spending.

41. The Commissioner is acutely aware that the provision of information plays an important part in informing the public about decisions made by public authorities and helps in the understanding of what and where public spending is being used.

Public interest in maintaining the exception

42. The council has stated that due to the amount of information and the content of it, it has had to consider the time it would take to produce the required information.
43. In this case, the amount of time that would be required would cause a significant impact on its resources in terms of officer time and considers it to be in the public interest to ensure its resources are not diverted to such an extent to respond to this request.
44. It considers that the following the redactions it would make to the information, should it be provided, the information that the complainant would be entitled to see would not meet his requirements and only strengthens the council's decision to refuse the request as it has.

Conclusion

45. The Commissioner accepts that there is a strong interest in disclosure of environmental information in general as it promotes transparency and accountability for the decisions taken by public authorities relating to environmental matters and public expenditure.
46. The Commissioner would expect the topic of a brown bin scheme to have a strong public interest as decisions on it would have implications to all residents. So it would only seem reasonable that they would need to be able access information on this topic.
47. However, this also needs to be balanced with what the request is for. In this case the requestor has requested 'all information' and as mentioned previously this opens it up to a wide range of information that may be caught in several areas and require a significant amount of time to produce it all, in excess of two weeks or more.
48. On consideration of the above, the Commissioner is satisfied that the detrimental impact that would be placed on the council's resources to respond to this request is greater than the public interest in responding to it.

49. Therefore the Commissioner finds that the exception at 12(4)(b) of the EIR remains engaged.

Regulation 9 of the EIR – Advice and Assistance

50. When refusing a request for environmental information under regulation 12(4)(b) of the EIR, on the grounds of costs, public authorities should provide the requester with appropriate advice and assistance.
51. Regulation 9 of the EIR is the regulation that requires a public authority to provide advice and assistance, as far as it would be reasonable to expect the authority to do so.
52. Regulation 9(3) of the EIR states that where a public authority conforms to a Code of Practice, it will be regarded as having complied with its regulation 9 obligations.
53. Part III of the EIR Code of Practice⁴ provides guidance to public authorities as to the recommended practice and steps to take when providing advice and assistance.
54. In this case the complainant argues that while not required to state his reasons for the request, it can be reasonably concluded that he wanted to understand the economics of the scheme and if it generated revenue, lost money or broke even.
55. He states that the council are perfectly aware of the document(s) that have not been released to the public but were available to councillors that may or may not have dealt with these matters and included estimates for take up and break-even point.
56. The complainant also states that the links that the council did provide him to his initial request do not relate to the economics of the brown bin scheme, but a far larger waste contract that involves all waste and other services.
57. The council has told the Commissioner that it provided the two links to the complainant and stated that if these did not answer the information requested, then it invites him to make a refined request.

⁴ https://ico.org.uk/media/fororganisations/documents/1644/environmental_information_regulations_code_of_practice.pdf

58. The council's internal review also stated that if there is any specific information or documents the complainant would like to receive, to detail these in any refined request.
59. The person conducting the review also stated to the complainant, at the end of the internal review response, if he has any questions regarding the review or would like to discuss the information request to contact them.
60. The council has stated to the Commissioner that the complainant has not contacted the council further on this offer.
61. The Commissioner notes the complainant's view that his request is more specific than what the council has interpreted it to be. However, he has asked for "*all information about the brown bin scheme including but not limited to the projected finances and economics*".
62. The council has to read this request objectively and it clearly asks for 'all information' held, on top of requesting projected finances and economics. So the Commissioner considers it reasonable for the council to take a wide interpretation of this request.
63. On review of the above, the Commissioner is satisfied that the council has provided reasonable advice and assistance to the complainant in explaining that a request for 'all information' is too general for it to respond to, offering him the opportunity to refine his request, and providing a point of contact for him to contact should he wish to discuss his request.
64. As the Commissioner has found regulation 12(4)(b) of the EIR to be engaged and appropriate advice and assistance has been provided, it would be for the complainant to now decide whether he wants to submit a revised request to the council.

Right of appeal

65. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)
GRC & GRP Tribunals,
PO Box 9300,
LEICESTER,
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: GRC@hmcts.gsi.gov.uk

Website: www.justice.gov.uk/tribunals/general-regulatory-chamber

66. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
67. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

Signed

Andrew White
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